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This non-biddable memo is an update to a previously circulated memo dated October 1, 2021, which referenced Attorney General opinion 2006-086 regarding advertising. The previous memo stated “purchases for advertising are considered non biddable and not subject to the competitive solicitation requirement.” The AG opinion referenced is actually more complex. It states “A contract to solely purchase airtime on radio and television stations is a purchase of a product, not a personal or professional service, subject to review by the Contract Review Permanent Legislative Oversight Committee. A contract with an ad agency or an independent contractor to purchase the services of the agency or contractor to aid the State in the selection of the radio and television airtimes to be purchased and to actually place the advertisements with the radio and television stations is a purchase of a service. A contract to purchase airtime and the services of an ad agency or independent contractor to aid the State in the selection of the airtimes and to place the advertisements is subject to review.”

Based on this AG opinion, direct purchases from the source of the advertising media (a particular radio or TV station, website, stadium, etc.) will be considered non-biddable and, pursuant to Section 41-4-126 (9) of the Code of Alabama 1975, are not subject to the competitive solicitation requirement.

However, the contracts for media or advertising campaigns where an advertising agency or 3rd party is paid to place advertisements on behalf of a State Agency, where they decide or recommend scheduling and placement of advertisements, or develop part of the campaign components (fliers, ads, commercials, etc.) are professional services. Beginning October 1, 2023, services of this nature must be solicited through the Request for Proposal (RFP) process and will be subject to review by the Legislative Oversight Committee.